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| AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.<br>300 WEST 6TH STREET<br>SUITE 2100<br>AUSTIN, TX 78701 |             |                      | NGUYEN, QUANG N     |                  |
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/712,101

Filing Date: November 14, 2000

Appellant(s): STEPHEN CARNEY

**MAILED**

**MAY 16 2005**

**Technology Center 2100**

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Dan C. Hu

For Appellant

***Examiner's Answer***

This is in response to the appeal brief filed 01/21/2005.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 2, 4-12 and 21-33 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal:

- Chen et al. (6,412,004) issued on 06/25/2002.
- Guenthner et al. (6,360,262) issued on 03/19/2002.

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 2, 4-12 and 21-33 are presented for examination.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 2, 4-12 and 21-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 6,412,004), herein after referred as Chen, in view of Guenthner et al. (US 6,360,262), herein after referred as Guenthner.**

4. As to claim 4, Chen teaches a distributed streaming media server system, comprising:

a plurality of streaming media servers (*a plurality of multimedia servers 340 as illustrated in Fig. 3*) that each store a selection of multimedia files (Chen, Fig. 3);

a master streaming media server (*a metasever 350 of Fig. 3*) communicatively coupled to the plurality of streaming media servers (*communicating with plurality of*

*multimedia servers 340 via a computer network 310 of Fig. 3) and that compiles mapping information regarding a location of each of the multimedia files that are stored on each of the plurality of streaming media servers (the metasever 350 comprises a metasever database which includes information about the video data streams stored in each multimedia server as illustrated in Fig. 11) (Chen, Figs. 3 and 11, C5: L46-54, C6: L6-10 and L31-48); and*

*at least one streaming media client that requests access to a multimedia file through the master streaming media server and receives setup information regarding the requested multimedia such that the at least one streaming media client may directly access the multimedia file from one of the plurality of streaming media servers (at least one client computer 360 of Fig. 3 that requests access to a multimedia file through the metasever 350 and receives the list of eligible servers that have the requested multimedia file such that the client computer 360 may directly access the multimedia file) (Chen, C6: L41-48 and C10: L21-31).*

However, Chen does not explicitly teach wherein the at least one streaming media client receives the setup information from one of the plurality of streaming media servers.

In the related art, Guenthner teaches a system and method of routing in a computer network having a pool of servers (*i.e., plurality of streaming media servers*), operating in the "handoff" mode, capable of servicing requests for access to a set of server resource objects (*i.e., multimedia files*) as shown in Fig. 4B, wherein the Resource Router (*i.e., the master streaming media server*) receives the client initial

request (**step 1**), selects the most appropriate server (*i.e., selecting server S1*) and forwards the request to the server S1 (**step 2**). The server S1 sends its response (*i.e., sending setup information*) directly to the client (**step 3**) and client dialogs with the server for subsequent access to the requested multimedia file (**step 4**) (Guenthner, Fig. 4B, C4: L64-67 and C5: L1-12).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of Chen and Guenthner to have the at least one streaming media client receiving the setup information from one of the plurality of streaming media servers (*Guenthner, steps 3-4 of Fig. 4B*) since such methods were conventionally employed in the art to allow the system to select the “best provider” (*select the most appropriate server*) and redirect or forward the request to the selected server as **operating in “handoff” mode**, based on the object of the request, to provide enhanced availability, responsiveness and load balancing for client requests to object access across multiple servers (Guenthner, C4: L5-10 and C8: L20-25).

5. As to claim 2, Chen-Guenthner teaches the server system of claim 4, wherein the multimedia files comprise video files (Chen, Video content 1030 of Fig. 11).

6. As to claim 5, Chen-Guenthner teaches the server system of claim 4, wherein the request for access to the multimedia file by the at least one streaming media (*client computer 360*) is multiplexed (*through the network 310, i.e., the Internet*) (Chen, Fig. 3).

7. As to claims 6-8, Chen-Guenthner teaches the server system of claim 4, wherein the master streaming media server considers load balancing when determining which of the plurality of streaming media servers is selected for access by the at least one streaming media client (*the metaserver 350 selects the proper algorithm to balance the load such as by measuring how busy each multimedia server is and how close a particular client is to each multimedia server with the proper content, etc.*) using a load poll thread, a load average queue, and load average threads to determine the load balancing among a plurality of streaming media servers (*the metaserver periodically communicates with each multimedia server to receive its status information such as number of current connections and multimedia content*) (Chen, C7: L1-38).

8. As to claim 9, Chen-Guenthner teaches the server system of claim 4, wherein the master streaming media server (*the Resource Router*) selects one of the plurality of streaming media servers (*multimedia server S1*) different from the master streaming media server to access for the requested multimedia file and redirects the requesting client to exchange information directly with one of streaming media servers (*the Resource Router receives the client initial request (step 1), selects the most appropriate server S1 and forwards the request to the server S1 (step 2). The server S1 sends its response (i.e., setup information) directly to the client (step 3) and client dialogs with the server for subsequent access to the requested multimedia file (step 4)*) (Guenthner, Fig. 4B, C4: L64-67 and C5: L1-12).



9. As to claim 10, Chen-Guenthner teaches the server system of claim 4, wherein the master streaming media server (*metaserver 350*) utilizes a logical content database (*metaserver database 940 which includes information about the video data streams stored in each multimedia server 340*) that is queried by the master streaming media server to identify which of the plurality of streaming media servers possesses a specific streaming media file that fulfills a request for the specific streaming media file originating from the at least one streaming media client (Chen, C6: L6-48).

10. As to claims 11-12, Chen-Guenthner teaches the server system of claim 4, wherein the at least one streaming media client, the master streaming media server, and one of the plurality of streaming media servers utilize a connectionless and stateless communications protocol (*i.e., TCP/IP*) (Chen, C3: L62-67 and C4: L1-15).

11. Claims 21-33 are corresponding method and system claims of distributed streaming media server system claims 2 and 4-12; therefore, they are rejected under the same rationale.

***Response to Arguments***

12. In the remarks, applicants argue in substance that

(A) Applicant submits that there is no motivation or suggestion to combine the teachings of Chen and Guenther to achieve the claimed invention.

As to point (A), in response to the applicant's argument that there is no motivation or suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, **Chen-Guenther** teaches the claimed invention as illustrated in the paragraph (4.) of the Claim Rejections above (pages 4-5).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of Chen and Guenther to have the at least one streaming media client receiving the setup information from one of the plurality of streaming media servers (*Guenther, steps 3-4 of Fig. 4B*) since such methods were conventionally employed in the art to allow the system to select the "best

provider" (*select the most appropriate server*) and redirect or forward the request to the selected server as **operating in "handoff" mode**, based on the object of the request, to provide enhanced availability, responsiveness and load balancing for client requests to object access across multiple servers (Guenthner, C4: L5-10 and C8: L20-25).

Examiner believes that the motivation or suggestion was given above to combine the teachings of Chen and Guenther is sufficient.

Also, the examiner submits "The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

(B) Examiner has also failed to establish a prima facie case of obviousness with respect to independent claims 21 and 28.

As to point (B), Examiner submits that claims 21-33 are corresponding method and system claims of distributed streaming media server system claims 2 and 4-12; therefore, they are rejected under the same rationale (i.e., see point (A) above).

(C) Prior Art do not teach or suggest, "the distributed streaming media server system of claim 4, wherein the master streaming media server includes a load poll thread, a load average queue, and load average threads to determine the load balancing among the plurality of streaming media servers", as claimed in claim 8.

As to point (C), Chen-Guenther teaches the server system of claim 4, wherein the metasever 350 selects the proper algorithm to balance the load such as by measuring how busy each multimedia server is and how close a particular client is to each multimedia server with the proper content, etc. Also, Chen-Guenther teaches the metasever periodically communicates with each multimedia server to receive its status information such as number of current connections and multimedia content (i.e., periodically communicating with each streaming media server to receive its status such as load poll thread, load average queue, and load average threads to determine the load balancing among a plurality of streaming media servers) (Chen, C7: L1-38).

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 2141



Quang N. Nguyen

May 11, 2005

Conferees



LARRY D. DONAGHUE  
PRIMARY EXAMINER

Respectfully submitted,



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